

SEP 4 1991

District Director
St. Paul District
Attn: Darlene O. Duffy
Chief, Examination Division

Assistant Chief Counsel
(Passthroughs & Special Industries) CC:PSI:8

Request for Technical Assistance re:
Excise Tax on Sport Fishing Equipment

This is in reply to your memorandum dated July 10, 1991, wherein you request technical assistance in determining whether certain "livewells" are subject to the federal excise tax on sport fishing equipment imposed by section 4161(a)(1) of the Internal Revenue Code.

You indicate that the livewells are containers that are permanently installed in a boat and are designed to hold a catch of fish alive for extended periods of time. The livewells are equipped with a pump which circulates lake water into the livewell. Although a livewell can be used for many storage purposes if the pump is not turned on, it is advertised as a container for holding and keeping fish alive. A boat may be purchased with a factory-installed livewell or a livewell may be installed on a boat subsequent to delivery of the boat to the customer.

Section 4161(a)(1) of the Code imposes on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer, a tax equal to 10 percent of the price for which so sold.

Under section 4162(a)(6) of the Code, the term "sport fishing equipment" includes certain enumerated items of fishing supplies and accessories, including bags, baskets, and other containers designed to hold fish.

Rev. Rul. 88-52, 1988-1 C.B. 356, provides definitions of certain items of sport fishing equipment. A bag, basket, or other container designed to hold fish is defined as a container designed to be hung over the side of a boat or other structure to keep fish captive and alive in the water. These containers may be made of any material. The term includes collapsible baskets or any similar device designed for the same purpose.

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The items enumerated in section 4162(a)(6) of the Code comprise an exclusive list of fishing supplies and accessories subject to tax. Thus, unless a fishing supply or accessory comes within the specific definition of one of the enumerated items under section 4162(a)(6), it will not be subject to tax.

The criteria for the taxation of the containers designed to hold fish are both general and specific in nature. The container must be designed to keep fish captive and alive in the water and can be made of any material. But, a taxable container must also be designed to be hung over the side of a boat or other structure. We believe that such container must, by necessity, be of a portable design and that Congress did not intend a permanently mounted container, one that becomes integral with the vessel itself, to be subject to tax. Inasmuch as livewells were marketed prior to enactment of sections 4161 and 4162 of the Code, we assume that Congress was aware of such devices and that it chose not to subject them to tax.

Accordingly, livewells are not subject to the tax imposed by section 4161(a)(1) of the Code.

This response is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case.

(signed) Jeffrey M. Nelson

Jeffrey M. Nelson

cc: Kellie McCann
St. Paul District
Examination Division (Excise)

TMargopulos/CC:PSI:8/343-8555/sb/final